

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE APPLICATION OF MEDICAL
RESEARCH COUNCIL FOR AN ORDER
PERMITTING ISSUANCE OF
SUBPOENAS TO TAKE DISCOVERY
FOR USE IN FOREIGN PROCEEDING,

Petitioner.

Case No. 15-mc-80213-HSG

**ORDER REFFERRING DISCOVERY
MATTERS TO MAGISTRATE JUDGE
AND DENYING MOTION FOR RELIEF
FROM NONDISPOSITIVE PRETRIAL
ORDER OF MAGISTRATE JUDGE**

Re: Dkt. No. 27

On December 29, 2015, Medical Research Council (“MRC”) filed a motion that purports to be a motion for relief from a nondispositive pretrial order entered by Magistrate Judge Sallie Kim. *See* Dkt. No. 27. Genentech has not filed an opposition. For the following reasons, under Local Rule 72-1, this matter is REFERRED to Judge Kim for resolution of all outstanding discovery issues, and MRC’s motion is DENIED.

I. LEGAL STANDARD

Under Civil Local Rule 7-9, before entry of judgment, “any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order.” Civil L.R. 7-9 (a). The moving party must show reasonable diligence in bringing the motion and one of the following:

- (1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or
- (2) The emergence of new material facts or a change of law occurring after the time of such order; or
- (3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

Civil L.R. 7-9 (b). “No party may notice a motion for reconsideration without first obtaining leave of Court to file the motion.” Civil L.R. 7-9 (a).

II. DISCUSSION


In its purported motion for relief, MRC argues that Genentech filed inaccurate and misleading documents and that the Magistrate Judge would have made a different determination if MRC were permitted to reply to Genentech’s documents. *See* Dkt. No. 27 at 1. Under Local Rule 7-9, an argument that “a material difference in fact or law exists from that which was presented to the Court” is properly brought as a motion for reconsideration before the judge that issued the interlocutory order. *See* Civil L.R. 7-9. Because MRC’s Motion is in truth a motion for reconsideration, the appropriate course is to seek leave from Judge Kim to file a motion for reconsideration. It is inappropriate for MRC to ask this Court to overturn the order based on facts it undisputedly never put before Judge Kim.

III. CONCLUSION

Accordingly, this matter is REFERRED to Magistrate Judge Kim for all outstanding discovery issues, and MRC’s motion for relief from the Magistrate Judge’s nondispositive pretrial order is DENIED. If MRC desires to file a motion for reconsideration, it shall move for relief to do so before Magistrate Judge Kim.

IT IS SO ORDERED.

Dated: 2/2/2016


HAYWOOD S. GILLIAM, JR.
United States District Judge